

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

<b>EMBRY JAY LOFTIS,</b>	)	
	)	
Petitioner,	)	
	)	
v.	)	<b>No. CIV 14-019-RAW-KEW</b>
	)	
<b>TRACY McCOLLUM, Warden,</b>	)	
	)	
Respondent.	)	

**OPINION AND ORDER**

Petitioner has filed a motion requesting the Court to appoint counsel (Dkt. 51). He bears the burden of convincing the Court that his claim has sufficient merit to warrant such appointment. *McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985) (citing *United States v. Masters*, 484 F.2d 1251, 1253 (10th Cir. 1973)). The Court has carefully reviewed the merits of Petitioner's claims, the nature of factual issues raised in his allegations, and his ability to investigate crucial facts. *McCarthy*, 753 F.2d at 838 (citing *Maclin v. Freake*, 650 F.2d 885, 887-88 (7th Cir. 1981)). After considering Petitioner's ability to present his claims and the complexity of the legal issues raised by the claims, the Court finds that appointment of counsel is not warranted. *See Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991); *see also Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995). Therefore, Petitioner's request for appointment of counsel is denied.


In addition, Petitioner attached to his motion the Order Granting Post-Conviction Appeal Out of Time, and Affirming Denial of Application for Post-Conviction Relief. *Loftis v. State*, No. PC-2018-152 (Okla. Crim. App. July 20, 2018) (Dkt. 51 at 7-13). The Court

construes this attachment as a response to the Court's Opinion and Order entered on August 21, 2017 (Dkt. 49), demonstrating exhaustion of his state court remedies.

Respondent is directed to show cause within thirty (30) days why the writ should not issue by filing an answer to the petition, in accordance with Rule 5 of the Rules Governing Section 2254 Cases. As an alternative to filing a Rule 5 answer, Respondent may file within thirty (30) days a motion to dismiss based upon 28 U.S.C. § 2244, 28 U.S.C. § 2254, or other applicable statute. Extensions of time will be granted for good cause only, and in no event for longer than an additional twenty (20) days. Petitioner may submit a reply to Respondent's answer or motion within fifteen (15) days after the filing of Respondent's pleading.

**ACCORDINGLY**, Petitioner's motion for appointment of counsel (Dkt. 51) is denied, and Respondent is directed to file an answer to the petition in accordance with the instructions set forth in this Opinion and Order.

**IT IS SO ORDERED** this 6th day of August 2018.

  
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Ronald A. White  
United States District Judge  
Eastern District of Oklahoma